IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.400/2004

Santosh Kumari & Ors. ..... Appellants
! through: Ms.Neelam Gupta, Advocate

VERSUS

$ The Oriental Ins. Co. Ltd. & Ors. ..... Respondents
^ through: Mr.P.K.Seth, Advocate with Mr.Mohd. Raghib, Adv. for R-1

RESERVED ON : 26-04-07

% **D**ATE OF DECISION: 01-05-07

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. On 08.02.1996, deceased aged 40 years died in a road accident involving bus No.DEP-6261. He was survived by his wife, 2 minor sons, a minor daughter and father.

2. Dependents filed a claim petition under Section 140 read with Section 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs.10 lacs on account of death of the deceased in the said vehicular accident. Father of the deceased died during the pendency of the claim petition.

3. After holding driver of the offending bus guilty of rash and negligent driving, learned Tribunal proceeded to determine compensation to the dependents.

4. Wife of the deceased, Santosh Kumari stepped into the witness box as PW-5 and deposed that her husband was a

transporter and was earning Rs.20,000/- per month at the time of the accident. She further deposed that deceased had bought a tempo under the hire purchase agreement from M/s. Singh Finance Company and was paying an installment of Rs.12,000/- per month and that he was earning his livelihood by plying the said tempo. She placed on record receipts (Ex.PW5/2 to Ex. PW5/21) which showed that deceased was paying Rs.11,000/- or Rs.12,000/- per month as installments. She further deposed that after death of her husband she sold the said tempo. Delivery receipt (Ex.PW5/1) showing the sale of said tempo was placed on record.

5. Tribunal disbelieved the testimony of the wife of the deceased that the deceased was a transporter and was earning Rs.20,000/- per month at the time of the accident. Tribunal did not place any reliance on the aforenoted receipts for the reason same were not proved by the person who had issued them.

6. Relying upon the driving licence of the deceased (Ex.PW5/22), learned Tribunal held that the deceased was a tempo driver. Aid of minimum wages notified under the Minimum Wages Act was taken by the Tribunal to determine the monthly income of the deceased at the time of the accident. Deceased was placed in the category of skilled labourer. Minimum wages for skilled labourer as on 1.2.1996 was Rs.2101/- per month. The same has been adopted as the monthly income of the deceased at the time of the accident.

7. Giving benefit of future increase in the income of the deceased, mean average income of the deceased has been

determined as Rs.3151.50 per month. (Rs.2101 + Rs.4202 ÷2 = Rs.3151.50). Annual income has been taken as Rs.37,818/-.

8. Deducting 1/3rd for the personal spending of the deceased, average loss of dependence has been determined at Rs.25,212/-.

9. Wife of the deceased had deposed that deceased was aged 35 years at the time of the accident. In absence of cogent evidence showing the age of the deceased, learned Tribunal has taken the age of the deceased as 40 years on the basis of the post mortem report (Ex.P-6). Applying multiplier of 16, total loss of dependence has been determined as Rs.4,03,392/-.

10. Adding thereto a sum of Rs.10,000/- for loss of love and affection, Rs.10,000/- for expectancy of the life of the deceased and Rs.2000/- for funeral expenses, total compensation awarded to the dependents is Rs.4,35,392/-.

11. Aggrieved by the amount of compensation, dependents/appellants have filed the present appeal praying for enhancement of compensation.

12. Learned counsel for the appellants has challenged the award on only one count. Counsel contended that while determining loss of dependence, Tribunal erred in determining income of the deceased at the time of the accident on the basis of minimum wages.

13. Learned counsel for the appellants contended that there was ample evidence before the Tribunal showing the income of the deceased at the time of the accident. He further contended that the testimony of the wife of the deceased as

also installment receipts, delivery receipt produced by her clearly established that deceased was the owner of a tempo and was earning his livelihood by plying the said tempo.

14. I agree with the learned counsel for the appellant inasmuch as the aforenoted installment receipts and delivery receipt (noted in para 4 above) establish that the deceased had purchased a tempo under a hire purchase agreement.

15. Motor Vehicles Act, 1988 is a beneficial legislation intended to provide monetary solace to the dependents of the victims of the vehicular accident. Standard of proof required under this legislation is a liberal one. The aforenoted installment receipts and delivery receipt appear to be genuine documents. A perusal of the record shows that installment receipt for each and every month has been placed on record. It is proved beyond doubt that deceased was paying an installment of Rs.12,000/- per month.

16. It could reasonably be assumed that deceased was earning such amount from which he was paying monthly installment of Rs.12,000/- and was also sustaining himself and his family. Thus, I consider it reasonable to take income of the deceased as Rs.18,000/- per month at the time of the accident. How else could he repay monthly installments of Rs.11,000/-?

17. However, the fact that deceased was paying an installment of Rs.12,000/- per month is a relevant fact. Therefore, his net income at the time of the accident is taken as Rs.6,000/- per month.

18. It is relevant to note that source of livelihood of

deceased was an asset which was being depreciated. Surely, the earnings of the deceased would have risen in the future but at the same time deceased would have spent a major portions of his earnings for reinvesting in the capital asset. Thus, I take net income of the deceased as Rs.6,000/- per month.

19. Noting the extended family of the deceased and also the fact that children of the deceased were aged 12 years , 10 years and 8 years respectively at the time of the accident, I consider deduction of 1/4th for the personal spending of the deceased as appropriate. Thus, average loss of dependence comes to Rs.4500/- per month.

20. Noting that the deceased was aged 40 years at the time of the accident, Tribunal has applied multiplier of 16 on the basis of Second Schedule appended to the Motor Vehicles Act, 1988. Multiplier of 16 applied by the Tribunal is on the higher side.

21. In my opinion, multiplier of 11 is reasonable. Thus, total loss of dependence comes to Rs.5,94,000/- (Rs.4500 x 12 x 11).

22. Tribunal has awarded Rs.4,03,392/- under the head 'loss of dependence'. Thus, compensation under this head is enhanced by a further sum of Rs.1,90,608/- (Rounded of to Rs.1,90,600/-).

23. Appeal stands disposed of by enhancing the compensation by a further sum of Rs.1,90,600/-.

24. Enhanced compensation shall be paid together with interest @ 6% p.a. from date of claim petition till date of

realization.

25. Enhanced compensation shall be paid as follows:-

“1.	Appellant No.1 (Wife):	Rs.1,30,600/-
2.	Appellant No.2 (Son):	Rs.20,000/-
3.	Appellant No.3 (Daughter):	Rs.20,000/-
4.	Appellant No.4 (Son):	Rs.20,000/-”

26. Enhanced compensation together with accrued interest shall be invested in a fixed deposit with a nationalised bank or post office for a period of 5 years. Monthly or quarterly or half yearly interest would be permitted to be withdrawn by parties.

27. No costs.

28. LCR be returned.

May 1, 2007 (PRADEEP NANDRAJOG)
vg JUDGE